

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0308
Sales and Use Tax
For Tax Years 2003-04**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax—Computer Supplies

Authority: IC § 6-2.5-3-3; IC § 6-2.5-3-4; IC § 6-8.1-5-1.

Taxpayer protests the assessment of sales tax.

II. Tax Administration—Negligence Penalty

Authority: IC § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer sells, installs, services, and/or repairs various safety products such as fire extinguishers, respirator masks, and sprinkler systems in Indiana. After an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed sales and use tax for the tax years 2003 and 2004. Taxpayer protested the imposition of use tax and penalty on purchases of office supplies from a computer supplies vendor. Taxpayer did not attend the hearing, and the Department wrote and issued a Letter of Findings based on the materials in the file.

I. Sales and Use Tax—Computer Supplies

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC § 6-8.1-5-1(b).

The Department found that use tax was due on the office supplies that Taxpayer had purchased from a computer supplies vendor. Indiana imposes "an excise tax, known as the use tax," on

tangible personal property that is acquired in retail transactions and is stored, used, or consumed in Indiana. IC § 6-2.5-3-2(a). An exemption from the use tax is granted for transactions where the gross retail tax (“sales tax”) was paid at the time of purchase pursuant to IC § 6-2.5-3-4. Since Taxpayer did not pay sales tax on the supplies at the time of purchase, then the supplies are subject to use tax.

Taxpayer maintains that the office supplies it purchased from the computer supplies vendor were received as part of a scam in which taxpayer was overcharged for the supplies. Taxpayer asserts that if use tax is assessed on these purchases it should be assessed on an amount representing a reasonable price for the supplies and not the purchase price.

Pursuant to IC § 6-2.5-3-3, “the use tax is measured by the gross retail income received in a retail unitary transaction.” In other words, the use tax is imposed upon the total purchase price, and the Department is only concerned with the price paid for tangible personal property. The Department does not consider whether or not a taxpayer got a good deal or bad deal. Therefore, the use tax is assessed on the total purchase price of the supplies.

FINDING

Taxpayer’s protest is denied.

II. Tax Administration—Negligence Penalty

DISCUSSION

The Department issued proposed assessments and the ten percent negligence penalty for the tax years in question. Taxpayer protests the imposition of penalty. The Department refers to IC § 6-8.1-10-2.1(a)(3), which provides, “if a person . . . incurs, upon examination by the department, a deficiency that is due to negligence . . . the person is subject to a penalty.”

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The department may waive the negligence penalty as provided in 45 IAC 15-11-2(c), as follows:

The department shall waive the negligence penalty imposed under IC § 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause

and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and was subject to a penalty under IC § 6-8.1-10-2.1(a). Under IC § 6-8.1-5-1(b), “the burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.” Taxpayer has not affirmatively established that its failure to pay the deficiencies was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer’s protest to the imposition of the penalty is denied.